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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application of:

David MacLEAN

Serial No. 09/550,049

Filed: April 14, 2000

For: SAFETY DEVICE FOR USE
WITH A VIAL

Art Unit: 3763

Examiner: Ghafoorian, Roz

Atty Docket: 0100/0091

EXPEDITED PROCEDURE

CRITICAL

RESPONSE

Commissioner for Patents
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VIA FACSIMILE
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Total pages: 3

Sir:

The following is a response to the Office Action dated October 22, 2003 in which pending claims 1-6 and 22-27 were rejected under 35 U.S.C. 102(b) as being anticipated by Bachman et al. U.S. patent 5,733,265.

Applicant respectfully submits that the examiner has misconstrued the teachings of Bachman.

In particular, Bachman does not disclose any collar slidably matable about a vial. At best, Bachman discloses a mount 48 that includes an opening 49 that is sized and shaped to receive at least a portion 53 of a needle hub 20 (column 4, lines 62-64; Fig. 1). Indeed, needle hub 20 has a proximal end 22 that is releasably mountable to a fluid handing device such as a syringe 30 (column 4, lines 53-55). There is therefore no vial disclosed by Bachman.

The examiner asserts that Bachman discloses "a latch member 70 extending from [sic] the neck member in a direction towards the center of the collar, the latch member coacting with the hub to prevent the collar from being removed from the vial once the collar has been mated about the vial and moved to be substantially adjacent the hub." [Page 2 of the Office Action] None of the quoted limitations is disclosed, or suggested, by Bachman, per the rebuttal hereinbelow.

The alleged "latch member 70" in actuality is a proximal raised retention area on the exterior surface 70 of each sidewall 38 of the elongate shield 32 of the needle assembly 10 disclosed by Bachman. In fact, retention areas 70 at elongate shield 32 are used to coact with two rails 69 on the inside surface 51 of cover 50 (see Figs. 8, 9 and 10), so as to retain cover 50 onto shield 32 when the needle assembly 10 is in its initial closed position as shown in Figs. 2 and 6, when the needle assembly is being shipped and before use. See also column 5, lines 38-43. Thus, raised retention areas 70 of elongate shield 32 in actuality have nothing to do with mount 48 for the Bachman device. Putting it differently, component 70 as shown in Fig. 1 of Bachman does not coact with anything on mount 48 for preventing mount 48 from being removed from needle hub 28. Rather, for the Bachman device, to maintain mount 48 to needle hub 20, an annular groove 78 is formed at the interior surface 79 of mount 48. This annular groove engages raised projection 21 at needle hub 20, so that mount 48 is retained to needle hub 20 and is rotatable at less than one rotation about needle hub 20 (column 6, lines 30-40).

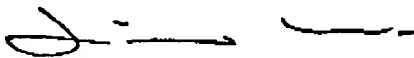
The actual usage of retention areas 70 at elongate shield 32 is to retain cover 50 in shield 32 before the needle assembly is to be used. Given the respective configurations of raised retention areas 70 at elongate shield 32 and rails 69 at the interior surface of cover 50, when the needle assembly is to be used, cover 50 is moved axially in the distal direction. As it is thus moved, a protuberance 73 engages the proximal edge 74 (Figs. 8, 9 and 10) to cause shield 32 to pivot about hinge 46 and move to the open position as shown in Fig. 3 (Column 5, lines 38-49). And once cover

50 is removed, an elongate shield 32 is pivoted away from needle 12 with a cantilever spring 66 providing resistance force against elongate shield 32 to prevent the latter from being closed over needle 12 unless a sufficient force is used. Needle 12 may then be used.

In sum, Bachman fails to suggest, let alone disclose: (1) a vial, (2) a collar that slides over the vial, (3) a latch member extending from the neck member in a direction towards the center of the collar, and (4) a latch member coaxing with the hub to prevent the collar from being removed from the vial once the collar has been mated about the vial and is positioned adjacent the hub. Putting it simply, nothing in Bachman remotely suggests the claimed invention.

In view of the above, the examiner is respectfully requested to reconsider the application and pass the same to issue.

Respectfully submitted,



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Date:

Jan 12 2004